

## National Park Service, Interior

## § 28.15

result in development of any lot which is less than 4,000 feet.

(d) Maximum lot occupancy for all development may not exceed 35 percent of the lot. Lot occupancy is calculated to include all buildings and accessory structures on the property and any extension of the upper floors beyond the developed area on the ground level.

(e) Lot occupancy of all privately-held improved property in the Seashore District is limited to 35 percent of the square footage of a lot that is less than 7,500 square feet, and to 2,625 square feet for a lot 7,500 square feet or greater. Lot occupancy is calculated to include all buildings and accessory structures on the property and any extension of the upper floors beyond the developed area of the ground.

(f) No building or accessory structure may be erected to a height in excess of 28 feet as measured from the average existing ground elevation or the minimum elevation necessary to meet the prerequisites for Federal flood insurance as determined by the National Flood Insurance Program/FEMA shown on Flood Insurance Rate Maps for Fire Island communities.

(g) A swimming pool is an allowable accessory structure and is calculated in measuring lot occupancy.

(h) No sign may be self-illuminated.

(i) A zoning authority shall have in effect limitations, requirements, or restrictions on the burning of cover and trash, excavation, displacement or removal of sand or vegetation, and the dumping, storing, or piling of refuse materials, equipment or other unsightly objects which would pose safety hazards and/or detract from the natural or cultural scene.

(j) A zoning authority shall have in place ordinances to lessen the potential for flood and related erosion and property losses consistent with the Federal Insurance Administration's National Flood Insurance Program criteria for "Land Management and Use," as set forth in 24 CFR part 1910, subpart A, as it may from time to time be amended.

### § 28.13 Variance, commercial and industrial application procedures.

(a) The zoning authority shall send the Superintendent a copy of all applications for variances, exceptions, spe-

cial permits, and permits for commercial and industrial uses submitted to the zoning authority within five calendar days of their submission of the completed application by the applicant.

(b) The zoning authority shall send the Superintendent a copy of the written notice of the dates and times of any public hearing to be held concerning an application no less than 10 days prior to the date of the hearing.

(c) The zoning authority shall send the Superintendent a copy of the written notice within fifteen calendar days of the approval or disapproval of any application for a variance, exception, special permit, or permit and copies of any variance, exception, special permit, or certificate which has been granted.

(d) The zoning authority shall send copies of all correspondence referred to in this section to:

The Superintendent, Special Attention: Zoning, Fire Island National Seashore, 120 Laurel St., Patchogue, New York 11772.

### § 28.14 Emergency action.

If allowable by local law and if immediate action is essential to avoid or eliminate an immediate threat to the public health or safety or a serious and immediate threat to private property or natural resources, an agency or person may commence a temporary use without a permit from the zoning authority. In all cases, the agency or person shall inform the Superintendent and send an application for a permit to the zoning authority within 10 days after the commencement of the use and the applicant shall proceed in full compliance with the provisions of the approved local zoning ordinance. When the reasons for undertaking the emergency action no longer exist, the agency or person shall cease an emergency action taken under this section.

### § 28.15 Approval of local zoning ordinances.

(a) The Secretary shall approve local ordinances or amendments to approved ordinances which conform to these regulations. The Secretary may not, however, approve an ordinance or amendment thereto which:

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(1) Contains a provision that the Secretary considers adverse to the protection and development of the Seashore;

(2) Does not comply with the federal standards set out in §§ 28.10, 28.11, and 28.12; or

(3) Fails to provide for the variance procedures of § 28.13.

(b) A zoning authority from time to time may amend its ordinance. At such time the Secretary may revoke the approval of any ordinance or portion of an ordinance which fails to conform to these regulations. Upon resubmission by the zoning authority of an amended ordinance, the Secretary shall approve the ordinance, if it conforms with the requirements of paragraph (a) of this section.

(c) Secretarial approval of a local ordinance will be withdrawn if the Secretary finds that a zoning authority is not enforcing its ordinance.

### **Subpart C—Federal Review and Condemnation**

#### **§ 28.20 Review by the Superintendent.**

(a) The Superintendent, within 15 working days of the receipt of a copy of an application for a variance, exception, permits for commercial or industrial use, or special permit submitted to the zoning authority for any development, use or change in use shall provide the applicant/landowner and the appropriate zoning authority written comments on the application. The purpose of the Superintendent's review is to determine if the proposed use or development does not conform to the federal standards and the purposes of the Act or is likely to cause significant harm to the natural resources of the Seashore. If the Superintendent's review determines the proposal does not conform, the Superintendent shall inform the applicant/landowner and appropriate zoning authority that should the proposed use or development proceed, the National Park Service may seek to enjoin the development and acquire the property by condemnation.

(b) The Superintendent may also appeal the decision of the zoning authority pursuant to procedures of local law.

## **36 CFR Ch. I (7–1–03 Edition)**

#### **§ 28.21 Suspension of condemnation authority in the communities.**

The Secretary has the authority to acquire land by condemnation. Upon Secretarial approval of local ordinances, Secretarial authority to acquire by condemnation private property within the communities and "improved property" in the Seashore District that conforms to the federal standards and the provisions of the Act or is not likely to cause significant harm to the natural resources of the Seashore is suspended, except as provided for in § 28.22.

#### **§ 28.22 Condemnation authority of the Secretary.**

(a) The Secretary has the authority to exercise powers of condemnation with respect to:

(1) Private property within the 8-mile area between the eastern boundary of Davis Park and the western boundary of the Smith Point County Park;

(2) Any beach or water and such adjoining land as the Secretary determines is necessary for access to the beach or water;

(3) Any property for which the Certificate of Suspension of Authority for Acquisition by Condemnation has been revoked;

(4) Any property, if the approval of the ordinance of the zoning authority has been revoked; partially revoked, or an exception was made to the Secretarial approval and such property fails to conform to these standards, or any property where the appropriate local zoning authority does not have an ordinance approved by the Secretary;

(5) Any property built or altered after October 17, 1984 that does not conform to the regulations in this part 28;

(6) Any property which becomes an exception to or has been granted a variance, exception, or special use permit after October 17, 1984 that fails or will fail to conform to the regulations in this part 28;

(7) Any new commercial or industrial use that the Superintendent has determined does not conform with § 28.20(a). A new commercial or industrial use is defined as any commercial or industrial use commenced after September 11, 1964. Any change in use of a commercial or industrial use including